BEFORE THE ADDITIONAL INDUSTRIAL TRIBUNAL IN MYSORE, BANGALORE.

Dated 25th November 1968.

PRESENT

Sri R. V. Kollali, B.A., LL.B., *Presiding Officer*

Complainant No. 9 of 1968 *in A.I.D. No.* 13 *of* 1966.

Complainant—

Sri T. Caspar, Staff No. 3580, No. 11, Gokula Upstairs (Old) Jalahalli P.O., Bangalore-13.

Vs.

Opposite Party—

The Management of Bharat Electronics Ltd., Bangalore-13.

Appearances

For the Complainant—

Sri M. C. Narasimhan, Advocate, Bangalore.

For the Opposite Party—

Sri B. T. Parthasarathy, Advocate, Bangalore.

AWARD

This is a complaint filed by the above complainant under Section 33-A of the Industrial Disputes Act, 1947, alleging that the Opposite Party has discharged the services of the complainant illegally during the pendency of an industrial dispute in A.I.D. No. 13 of 1966 on the file of this Tribunal.

2. The complainant joined the service of the Opposite Party as a Mechanic in 1962. In 1968, he was working as a 'B' Grade Mechanic. According to the complainant, he fell ill on 15th April 1968 and had to go to his native place from where he sent on 20th April 1968 an application to the Section Head, Plant Engineering of the Opposite Party enclosing a Medical Certificate and requested for leave of absence. His illness continued and he did not recover till 13th June 1968 when he reported to duty. When he did so

report for duty, he was informed that his name was removed from the Rolls and on that ground, he was refused work. On 14th June 1968. the complainant made an application to the Management of the Opposite Party for permitting him to work and he was informed by letter dated 20th July 1968 by the Management turning down the request of the complainant. The complainant alleges that in refusing work to him and in discharging him from service, the Opposite Party had acted *mala fide* and in a manner that was discriminatory and illegal. It is alleged by him that the Management of the Opposite Party had accepted the Medical Certificate and sanctioned him leave in all cases and that the action against the complainant had been taken for extraneous reasons and without considering the leave application dated 20th April 1968 and that the action had been taken without enquiry and he had been discriminated and as such bad. He also pleaded that he is a concerned workman in A.I.D. No. 13 of 1966 and his removal from service for absence without leave has not been placed before an Industrial Court for the purposes of according approval under Section 33(2) (b) of the Industrial Disputes Act and that he had not been paid one month's wages as required under that provision of law and hence there has been contravention of the provisions of Section 33 of the Industrial Disputes Act.

3. The Opposite Party by its objections stated that the complainant had absented from work from 15th April 1968 without leave, that he sent a Medical Certificate dated 19th April 1968 from a Doctor in Nagercoil which indicated that the complainant had been under treatment from 15th April 1968, that his time card was removed from the rack on 30th April 1968 and his name was removed from the rolls on 14th June 1968 in accordance with the Standing Order 9(c), that the approval of the Tribunal was not required in the case of the complainant even though he was a concerned workman in A.I.D. No. 13 of 1966, that there had been no *mala fides* or discrimination as alleged by the complainant, that the removal of the complainant from the rolls was in accordance with the Standing Orders and Office Orders and therefore, quite legal, the contention that the Medical Certificate had to be accepted in every case is untenable, that no extraneous reasons weighed with the management towards the complainant, that in a matter of the type presented by the complainant no enquiry was warranted, that the complainant is not entitled for any of the reliefs claimed by him and that the complaint itself is not maintainable.

4. The following Issues were settled for decision:—

"1. Whether the Complaint is maintainable in law?

2. Whether the Complainant is entitled to reinstatement?

3. Whether the Opposite Party should have held an enquiry and given an opportunity to the Applicant to explain his absence.

4. Whether the action of the Management is discriminatory ? ".

My findings are—

1. No.
2. No.
3. No.
4. No.

Reasons—

The clear case of the complainant is to be found in para 8 of the complaint. Therein, he has stated that he fell sick on and after 15th April 1968 and that he had to go to his native place from where he sent an application to the Section Head on 20th April 1968 enclosing the Medical Certificate and praying for leave of absence. He also stated therein that he did not recover from his illness and could not report to duty till about 18th June 1968 when he reported to duty and was informed that his name was removed from the rolls. That is the factual picture which the complainant alleged at the outset. Exhibit C. 2 is a Medical Certificate dated 19th April 1968 from a Doctor in Nagercoil. According to that Medical Certificate, the complainant was under the treatment of the particular Physician from 15th April 1968. That was obviously the Medical Certificate that had been sent with the leave application at Exhibit C. 1. The fact of illness alleged by the complainant has not been admitted by the Opposite Party. From the evidence of the complainant, it is clear that the journey from Bangalore to Nagercoil would take more than 25 hours. He has stated that he left Bangalore at 6-10 P.M. on 15th April 1968 and reached Nagercoil by 7-40 P.M. on 16th April 1966. If the complainant's oral testimony is to be accepted as representing the truthful account, then what is set out in the Medical Certificate, Exhibit C-2 would have to be taken as untrue. Surely the Doctor at Nagercoil could not have commenced the treatment on 15th April 1968 when the complainant according to his own statement was in Bangalore. At the trial a version was sought to be established that on 14th April 1968 itself, the complainant took ill and he was assisted by his co-worker C.W. 2. Armugam on that day. In fact, what C.W. 2 has stated is that he was with the complainant for about 5-00 P.M. on 14th April 1968 until the next morning as the complainant was in bed. He also stated that he took the complainant to Dr. Ramu, a registered Medical Practitioner who has dispensary in the same

building in which the complainant had been residing. The complainant for his part, stated that on 15th April 1968 he had been treated by Dr. Ramu at Bangalore. He never stated anything in regard to his having been ill on 14th April 1968 or in regard to his having been treated by Dr. Ramu on 14th April 1968. No Medical Certificate from Dr. Ramu is to be found nor has Dr. Ramu been called to speak to the fact of his having treated the complainant, whether on 14th April 1968 or on 15th April 1968. Clearly, therefore, there is no satisfactory evidence regarding the illness of the complainant on 14th April 1968 and on 15th April 1968. The Medical Certificate Exhibit C. 2 cannot be accepted as true for the reason that the complainant was not in Nagercoil until late in the evening of 16th April 1968. I should also notice that the complaint itself as set out the fact that the complainant took ill on and after 16th April 1968. Therefore, the theory of the illness of the complainant on 14th April 1968 which is being spoken to solely by C.W. 2, Armugam cannot be true at all. C.W. 2 had been saying something which the complainant himself had not stated. It is also to be noticed that if the treatment by Dr. Ramu was true, there could have been evidence about it very easily since he is a registered Medical Practitioner of Bangalore.

6. Another circumstance which was sought to be made out through C.W. 2, Armugam, is that on 15th April 1968 in the morning he carried a leave note from the complainant to the Section Head and delivered it to the Senior Mechanic one, Viswanath Nair. This again is the story which comes in only at the stage of the evidence. The earliest communication from the complainant that is on record is at Exhibit C. 1. It does not make any reference to any leave note of 15th April 1968. Thereafter, the next writing of the complainant is at Exhibit C. 4, dated 14th June 1968. Therein also there is no Reference to any leave note of 15th April 1968. Chronologically the 3rd representation under the complainant's signature would be the complaint itself which was filed on 2nd August 1968. Therein also, the only reference we find is to Exhibit C. 1 and C. 2 and not to any earlier leave note. Had there been an earlier leave note, Exhibit C. 1 would have, surely, made a reference to such a leave note and the request in Exhibit C. 1 would have been that it was being made in continuation of the earlier leave note. All these very clearly bring out that the evidence of C.W. 2 in regard to the leave note on 15th April 1968 and the attempt of the complainant to allege that he had sent such a leave note is clearly an after thought. For the first time, a reference to it can be found in Exhibit M. 1, dated 17th September 1968. That is a letter by the Secretary, BEL Employees' Union to the Administrative Manager setting out the case of the complainant and seeking redress at the hands of the Management. What

is obvious is that until 17th September 1968, the question of the leave note and the treatment of the complainant by a Physician at Bangalore on 15th April 1968 had never been thought out at all. For the first time when the General Secretary of the Employees' Union sought to approach the management, such a point was conceived and was so conceived obviously as an after-thought. The theory, therefore, of the complainant's leave note dated 15th April 1968 is clearly false. If Exhibit C. 2, the Medical Certificate from Nagercoil has any meaning, the complainant could not have been in Bangalore at all on 15th April 1968. The evidence of C.W. 2, Armugam in this behalf is not to be believed. If the complainant was at Nagercoil for being treated by the Doctor who has issued the certificate at Exhibit C. 2, it follows that the complainant must have left Bangalore before 15th April 1968. There is no reason to support the view that the person who issued Exhibit C. 2 could be giving out a false certificate. That would, then mean that the complainant's case as he is now speaking before this Tribunal is totally divorced from truth, 13th April 1968 and 14th April 1968 were holidays for the Factory. It appears to me that the complainant left Bangalore either on 13th April 1968 or on 14th April 1968 and an admission of the truth would not perhaps serve his purpose. Therefore, he has now taken an oath according to which the Medical Certificate, Exhibit C. 2 itself has to be discorded as being untrue. Inasmuch as the Physician who has Issued C-2 has not been examined, I am not in a position to clearly from an opinion in regard to Exhibit C. 2 itself, but the conflicting position of the case of the complainant at different stages is sufficient for concluding that the complainant cannot be believed and his co-workers C.W. 2, Armugam cannot be believed.

7. Why a reconsideration and second thoughts over the complainant's case were felt necessary can be understood by referring to the Standing Orders by which the complainant was governed. Standing Order 9 provides for leave. Standing Order 9(a) deals with the annual leave with which we have now no concern. Standing Order 9(b) provides for leave and further leave procedure. Standing Order 9(b) (1) lays down that except in exceptional circumstances, the request for annual leave with pay should be made at least 15 days in advance. It also provides that a workman after proceeding on leave must request at least 7 days before the expiry of the sanctioned leave if he wants to extend his leave. 9(*b*) (2) lays down that any workman remaining absent beyond the period of leave originally granted or subsequently extended shall loose the lien on his appointment unless he :

(i) returns within 8 days of the expiry of the leave and

(ii) explains to the satisfaction of the Head of the Department for the delay.

Standing Order 9(c) runs as follows :—

> "*Absence without leave.*—Any workman who absents himself for eight consecutive days without leave shall be deemed to have left the Company's service without notice. If he gives an explanation to the satisfaction of the Manager, the absence will be converted into leave due at the discretion of the Manager."

According to that Standing Order, if a workman is absent without leave for 8 consecutive days, he shall be deemed to have left the Company's service without notice. When such an event happens, it is for the workmen to give explanation to the satisfaction of the Manager and then the absence could be converted into leave due at the discretion of the Manager. In the instant case, the complainant obviously had no leave at his credit. This can be gathered from the fact that on 12th February 1968, the complainant's marriage took place in Nagercoil. At the time of his marriage, he had asked for advance annual leave after exhausting his earned leave and he had been granted 3 days advance annual leave from 17th February 1968 to 20th February 1968. This would very clearly show that there was no question of any leave being due to the complainant. Sick leave was, therefore, the only alternative for the complainant. He does not want obviously to admit that he availed of the consecutive holidays on 13th April 1968 and 14th April 1968 for going to his native place. Unless he was there on 15th April 1968, the Doctor would not have issued such a certificate. Having very clearly made it out that his illness commenced on 15th April 1968, he could not stretch it back. But with a view to contend that on 15th April 1968 before leaving for Nagercoil he did report to his Section Head that he had taken ill and therefore was going to his native place, he has altered the story and C.W. 2, Arnugam has come to assist him in that behalf, but their attempt in this behalf falsified the Medical Certificate itself or at any rate, puts the Medical Certificate, Exhibit C-2 into considerable doubt.

8. In my opinion, the complainant left Bangalore without intimation and for the first time wrote to the Management for leave by Exhibit C-1 enclosing the Medical Certificate, Exhibit C-2.

9. Under Standing Order 9(c), any person who absents from work consecutively for 8 days without leave, is deemed to have left the Company's service without notice. When he reports, if he had a satisfactory explanation, then his absence could be converted into leave due at the discretion of the Management. No leave was obviously due to the complainant. The circumstances connected with the Medical Certificate (as they appear in Exhibit C-2) in these proceedings have been discussed already. The matter is obviously unsatisfactory and not convincing.

10. Through C.W. 3 who is the Vice-President of the Bharat Electronics Limited Employees' Union, two points were sought to be made out. One of them was that when any leave application was handed at the office, no acknowledgment was being given by the Office. It is on account of this state of affairs that the complainant has been able to introduce at the evidence stage, the theory of a leave application dated 15th April 1968. I have not been able to believe the complainant and C.W. 2, Armugam who had been put up as the bearer of the said leave note to the office. Granting that no acknowledgment was being made by the Office when a leave application was handed over, the evidence about the handing in of a leave note has got to be reasonably convincing. In the instant case, for the reasons which I have already advanced, this part of the complainant's case is far from convincing. On the other hand, in my conclusion, there was no such leave note delivered and the theory is being propounded by way of an after-thought conceived near about the date of Exhibit M-1. The second point on which the evidence of C.W. 3 dwells is on the point of alleged discrimination and victimisation. The case of this discrimination and victimisation would be as follows :—One Mallappa who had been the Superior Officer of the Complainant was ill-disposed towards the complainant and had generally been harsh in dealing with the Members of the Employees' Union. The complainant's dismissal was due to his Union activities. C.W. 3 also stated that usually an employee who took ill would produce a medical certificate from a registered medical practitioner reporting for duty after he got well. The witness cited two instances of Varadarajan and Srimathi Alamelu, both from the Coil Winding Section. These two persons were said to have been absent as being ill for more than 550 days and 665 days continuously respectively and in their cases the Medical Certificates from the Registered Medical Practitioners were accepted by the Management and *post facto* leave was sanctioned to these two persons. In cross examination, the witness was asked to say if he knew the case of Nagaraja Rao, Ethiraj, Ramakrishna, K. S. Murthy and some others. In regard to the two specific instances spoken to by C.W. 3, the 1st witness for the Opposite Party had stated that Varadarajan had kept the Management informed during the period of his absence and that he had been working in terms of a bond executed by him. In regard to Srimathi Alamelu, he stated that E.S.I. Medical Certificates were being received in respect of her by the Section head.

11. That cannot be a practice which can be of universal application that would destroy the discretion which a manager has for acting under the provisions of Rule 9 (c) of the Standing Orders. How the satisfaction of the Manager had for the purpose of that particular provision of the Standing Orders will have to depend on the facts and circumstances of each and every case. A mere Medical

Certificate can never be considered to be furnishing that satisfaction in all cases. The Medical Certificates like many other things can be of doubtful veracity. It is so in the instant case. By his own showing, the complainant has produced the Medical Certificate which cannot but be regarded as being highly unsatisfactory. If he was not in Nagercoil till the evening of 16th April 1968, the certifying Medical Practitioner of Nagercoil could not have treated the complainant from 15th April 1968 as set out in the Medical Certificate itself. Clearly the complainant's hands are not clean in filing this complaint. He has tried to put up an untrue story as to his illness.

12. It is to be stated very clearly that the complainant is not an office bearer of the Employees Union. The complainant himself has not stated anything in regard to his Union activities. There is, therefore, no merit in the assertion of C.W. 3 that the complainant's dismissal was due to Union activities. It should be noted also that in Exhibit M-1 which was the representation made by the General Secretary of the Employees' Union on 17th April 1968, there is no grievance voiced against Sri Mallappa. The situation as on 17th September 1968 has been that the complainant had been out of work very clearly for more than 3 months and a complaint had been filed before this Tribunal. Even at that stage, no grievance was being uttered as against the superior officer of the complainant. The complainant has also stated that on completion of his training, he had been assigned to the Transport Section where his Sectional Head was Sri Mallappa. The complainant continued in that Section until September 1967 when he came to be transferred to the Plan Engineering Radar Section. There also, it was Sri Mallappa who was his senior officer. He has admitted that on 13th January 1965, he was upgraded to Mechanic 'B' from Mechanic 'C'. He has further stated that it was Sri Mallappa himself who took the complainant from the Transport Section to the Plant Engineering Section when he was himself transferred. These circumstances do not justify the contention of the complainant against his superior officer. It was also to be noted that in 1964 and in January 1967 the complainant had produced medical certificates for a period of illness and he was allowed to resume his duties. In February 1967, the benefit of the grant of advance annual leave for 3 days was also extended to him by the Management. These circumstances again belie the allegations of the complainant against his superior officer and also the Management.

13. The learned Advocate of the Complainant argued that the complainant having sent an application, Exhibit C-1 along with the Medical Certificate, Exhibit C-2, the Management should have informed him as to how it reacted to the leave application. It is

no doubt, true that the Management could have acknowledged the receipt of the leave application and the accompanying Medical Certificate. The Management, however, could not have done anything more than that. All it could do was to await the return of the complainant for reporting for duty. It is at that time that the question of regularising the leave under Standing Order 9(c) would arise. Till such a stage, therefore, there was nothing that the management could do. Therefore, I do not think that this particular point is of any significance. The case of victimisation and discrimination is not, in my opinion, made out in this case.

14. The learned advocate for the complainant argued that an opportunity should have been given to the complainant to explain the circumstances connected with his absence before the management removed him from the Muster Rolls. It is to be noted that while absence without leave for more than 8 consecutive days is a misconduct about which an employee can be charge-sheeted, the provisions in Standing Order 9(c) lay down that in the case of the workman who absents himself for 8 consecutive days without leave, the workman shall be deemed to have left Company's service without notice. This clause introduces a scheme of automatic termination on the happening of the particular contingency set out in that clause. In National Engineering Industries *vs.* Hanuman 1968 L.I.C. 3, the following principle has been enunciated :—

> "Where a standing order provides that a workman would loss lien on his appointment, if he does not join duty within certain time after his leave expires it only means that his service stands automatically terminated when the contingency happens..... No difference is made in the position because of the existence of another provision in the standing orders treating absence without permission exceeding ten consecutive days as one of the major misdemeanours. That provision is only an alternative provision and the employer would be free to resort to any one of the provisions provided in resorting to one particular provision he does not act *mala fide*."

As I have stated in the instant case, the contention had been taken that the management had acted *mala fide* or without *bona fide* I have already referred to the circumstances in para 12 herein above. The circumstances indicate that the complainant had been promoted and on two occasions in the past, he had proceeded on sick leave and he was permitted to go on leave and *post facto* leave has been sanctioned to him. Three days advance annual leave had also been sanctioned to him just about two months before the event about which this complaint has been filed. In view of the conclusions that I have reached on the complainant's case and the evidence led on his behalf, there can be *mala fides* that can be attributed

to the Management. In Exhibit C. 4 which was the representation of 14th June 1968, the complainant tried to make out that this was a case of absence without intimation and he sought to rely on the fact that he had sent Exhibit C-1 to the Management. Obviously, the complainant's case had been treated as one of absence without leave for 8 consecutive days which under Standing Order No. 9(c) put the complainant in the position of having left the Company's services without notice. His case of illness on and after 15th April 1968 is not true as I have already held. His attempt to make it appear that he had sent a leave note dated 15th April 1968 is again a futile one. That part of his case at the evidence stage is false.

15. The decision in Yeshwant Sitaram Rane *vs.* Goodlass Wall Ltd., 1954 I LLJ 505 was cited on behalf of the complainant. In that case what was clear was that some sick leave was there to the credit of the workman who had over-stayed the sanctioned leave. The Management did not sanction or give credit to the employee even for the sick leave that was standing to his credit. In fact, the Management did not appear to have considered the leave that was due to the employee, but instead, proceeded to apply the rule of automatic termination. In those circumstances, it was held that the action of the management was wrong. The Management's action was held to be wrong for another reason also. Under the rule of the automatic termination then applicable, it was to come into effect after the lapse of 15 days with effect from the close of any sanctioned leave. Even before the sanctioned leave was over, the employee in the case had requested for extension of leave and the management had not granted even the sick leave that was to the credit of the employee. Instead the Management informed the employee that his request for extension of leave had been refused. The automatic termination was put into effect in that case without taking into account the leave that was at the credit of the employee which was held to be bad.

The decision in Murugan Mills. *vs.* the Industrial Tribunal, Madras (1965 I LLJ 422) was cited. In that case, a notice of termination had been issued by the Management and the notice was held to be a bad one on the ground that no reason had been assigned for the termination. The principle of that ruling cannot be pressed into service in the instant case.

Another decision that was cited was one in Kanaksing Ramsing *vs.* Narmada Valley Chemicals Industries Ltd., (1956 I LLJ 377). That was also a case of the Over-stay of the employee beyond the sanctioned leave. The lien of the employee was said to have been lost and he was placed in the badli register, but no order had been passed by the Management to the fact that the lien had been lost by the employee. Further the change of the status of the employee

from a permanent workman to a Badli (Temporary) one had introduced a change in the condition of service of the employee for which no opportunity had been given to the employee. Therefore, the action of the Management was held to be illegal. The principle of that ruling is not applicable to the facts of the present case. The decision in Balwant Raj *vs.* Union of India 34 I.F.J. 42 was also cited. That was also a case of the over-stay of an employee beyond the period of sanctioned leave. It was established in that case that the employee could not resume duties on the expiry of the leave granted on account of sickness. In such a case, the automatic termination was held to be inapplicable and it was pointed out that as a matter of fact when the employee did report for duty automatic termination had not been given effect to. That case also has no application to the instant case.

The learned Advocate for the complainant argued that in industrial adjudication, the pleadings should not be construed strictly. Obviously, he had in mind the decision in Tandur and Navandgi Stone Quarries *vs.* their workmen 1964 I LLJ 737. There is no doubt that the rule as to the consideration of the pleadings in a civil court would not be applicable to the pleadings in industrial disputes, but that principles, however, cannot be stretched to the limit of permitting a party to be inconsistent and untrue on matters of facts. In view of my conclusions regarding the complainant's case and the evidence that has been led, the complainant has not come out with a truthful account about his illness. Therefore, from this particular proposition of law, no advantage can be gained by him.

In Indian Iron and Steel Company Ltd. *vs.* their workmen, 1958 I LLJ 260, it has been held that the question as to whether leave should be granted or not, must be left to the discretion of the employer. In that particular case, the question which had arisen for consideration related to some workmen who had been taken in custody by the Police. When in custody, those workmen had made an application to the Company for leave. The Company however, refused to leave and went on to hold the said workman guilty of absenteesm. The Supreme Court upheld the action of the Management and indicated that if the workman had been taken into custody at the instance of the employer, then the dismissal for absenteeism would have been *mala fide* but as in that case, the employer had nothing to do with the arrest of the workmen, he was the sole judge for disposing of the leave application as he thought fit in the exigencies of work. The mere application for leave would not present the continuity of absence.

The decision in Buckingham and Carnatic Company *vs.* Venktaayya 1963 II LLJ 638 is also a case of over stay by an employee

beyond the period of leave, who produced a medical certificate by explaining his absence. The Company had enforced the rule of automatic termination. In that case, though as in the instant case, absence for a number of days continuously was a misconduct entailing disciplinary action against the employee, the Medical Certificate produced by the employee was rejected by the employer and the action was approved by the Supreme Court. The action of the employer was sought to be challenged on the ground of *mala fides* but that contention had been negatived.

In the instant case, I am not prepared to accept the complainant's case that he was ill on and after 15th April 1968; the evidence was that he was ill even on 14th April 1968 and that he was treated by a Registered Medical Practitioner in Bangalore. No evidence about that treatment is produced. The Medical Certificate Exhibit C-2 cannot be accepted in view of the complainant's statement at the evidence stage. The complainant in my view has not come out with the truth. The Opposite Party was entitled to apply the rule of automatic termination under Rule 9(*c*) of the Standing Orders. The attack of *mala fide* against the action of the opposite Party is not substantiated. There has been no victimisation or discrimination as it was a case of automatic termination. There was

no question of any enquiry having been necessary. Therefore, the complaint is not maintainable. I pass the following Award :—

AWARD

Complaint is dismissed. In the circumstances, no Order as to costs.

R. V. KOLLALI,
Presiding Officer,
Additional Industrial Tribunal,
Bangalore.
25-11-1968.